

SUMMARY: Port of Chehalis Regional General Permit (RGP)
October 26, 2016

Issue: On October 7, 2016, the Seattle District Corps of Engineers issued Public Notice NWS-2008-549 which proposed the reissuance of a RGP for the Port of Chehalis. The original permit application, for which EPA sent 404(q) Part IV (3)(a) and (3)(b) letters, was negotiated with the Corps for two years, and the Corps ultimately authorized the placement of fill in up to 25 acres of Category IV wetlands within an approximately 1800 acre area within the Port for the construction and expansion of industrial development. Region 10 believes that the proposed RGP does not comply with the 404(b) (1) Guidelines, and recommend that the Region initiate the 404(q) elevation process for the proposed RGP.

Background: A General Permit is a type of permit that the Corps of Engineers can issue as part of its regulatory program. It is not a permit for a specific development with a specific footprint; rather, it is intended to authorize a *class* or *category* of activities. There are two types of General Permits, viz., nationwide GPs and regional GPs. These authorize activities, respectively, on a nationwide basis, and a regional basis. In order for any General Permit to be authorized, the Corps must be able to make a finding that the performance of the activity will result in only minimal environmental effects, both individually and cumulatively.

On May 7, 2009, the District issued a public notice which proposed a RGP for the Port of Chehalis, described as above. On July 6, 2009, the Region sent a 404(q) Part III (a) letter to the District, which was followed on July 30, 2009 with a second letter under 404(q) Part III (b). This sequence of letters stated that EPA believed that the proposed project would cause substantial and unacceptable adverse effects on an Aquatic Resource of National Importance (ARNI), namely, the lower Chehalis basin. Our concerns included loss of flood storage and water quality maintenance provided by the affected wetlands, concerns that this loss of flood storage would adversely affect flood-prone areas in the Chehalis-Centralia corridor, and that this could adversely affect both federally-funded flood remediation which was occurring in the area as well as the Chehalis tribe Flood Management Plan. We also expressed concerns that a number of significant salmonid populations in the Lower Chehalis could be adversely affected by reductions in water quality due to loss of wetlands and increases in flooding. We were concerned that this was for an activity which was speculative in nature and which was actually intended to occur across 9 parcels in Chehalis (total of about 115 acres) for the build-out of Chehalis Industrial Park, rather than for all properties within the larger Port District. Coordination occurred between our agencies, and EPA notified the District that it would not seek higher level elevation on August 4, 2011. The reasons for EPA's withdrawal of its objection were based on changes and special conditions that the Corps added to the RGP, viz.: 1. A reduction in the maximum threshold of fill allowed under the permit, from a proposed 40 acres to 25 acres; 2. A requirement that the Port submit a functional assessment on wetlands and waters to be impacted under each proposed use of the permit; and 3. A provision that the District Engineer will notify EPA upon receipt of a pre-construction notification (PCN) from the Port, provide an opportunity for EPA to comment on the proposed activity, and fully consider comments received within the specified time frames.

On September 27, 2011, the Seattle District issued a RGP to the Port of Chehalis for the placement of fill in up to 25 acres in the proposed RGP area. In its decision document, the District identified that the alternative areas available to the Port could change, and that the need

for the level of development could change. The Port's identified "needs" were for 49 acres of fill based on a 10-year planning horizon, and so the Corps issued the RGP for half that amount for the first half of that planning horizon. The RGP was used once in 2015, for 6.5 acres of fill into wetlands.

There is currently a State DEIS (SEPA) on the Chehalis Basin Flood strategy, which is available for public comment until November 14. The goals of the strategy are to reduce flood damage and to restore aquatic habitats. The DEIS identifies a range of four alternatives but also concludes that no single action will achieve the necessary level of protection. Among the actions identified in the different alternatives are Large Scale actions, which would involve construction of a retention dam near Pe Ell, and widespread levee system, as well as channel and habitat restoration to increase natural flood storage. Local Scale Flood Damage reduction actions include flood proofing, land use management which would emphasize regulations to protect remaining floodplain functions and provide construction standards, as well as improvement of flood warning systems. An additional study prepared in 2006-2007 by the Climate Impacts Group of the University of Washington predicts both higher rainfall and higher streamflows for the lower Chehalis basin. There have been 14 federally declared disasters in the Chehalis basin since 1971. Given this background, and that the actions are not expected to mitigate all flooding hazards, particularly in light of climate change, it does not seem that loss of an additional 40 acres of flood storage is likely to have minimal effects, either in light of the flood hazards or the declining health of the fish and fisheries of the lower Chehalis basin. Consequently, we must conclude that individual permits, not a blanket authorization under an RGP, is the appropriate way to evaluate proposals to fill wetlands in this sensitive region.

Congressional interest: There was considerable congressional interest on this project in 2009, both from Congressman Baird's office as well as both Senators Murray and Cantwell. Congressman Baird was instrumental in obtaining federal funding for the then-recently completed Rush road exit off I-5, which would service Chehalis Industrial Park. Considerable pressure was brought to bear on the Corps to issue this permit. We do not know if the current Congresswoman, Jaime Herrera-Beutler, will have the same position.

Recommendation: We recommend that the Region send a 404(q) Part IV(3)(a) or combined (a) and (b) letter to the Corps. The only basis for defining the fill in 2011 appears to have been dictated solely by the footprint of the Port's original project, and not by an analysis that this is the threshold of fill which would have minimal effects. The need to place fill does not appear to be as compelling as the Port contended, given only one use of the permit during its active life; consequently, the proposed increase in fill threshold seems unwarranted. The additional information available on the Chehalis basin strategy indicates that flooding will still remain an issue, and additional fill impacts will both eliminate flood storage and contribute cumulatively to the degradation of salmonid habitat which the strategy is attempting to improve. Consequently, we must conclude that the effects are not minimal and would best be evaluated in the context of individual permits.

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